



# Dog Attack Policy

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<b>Endorsement</b>	Policy Review Panel – 18 April 2018
<b>Authorisation</b>	Council – 30 April 2018
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<b>Responsible officer</b>	Manager Compliance
<b>Policy owner</b>	City Amenity & Compliance Coordinator

## 1 Purpose

Dog attacks include dogs biting, rushing at or chasing a person or animal. The number of dog attacks occurring in suburban areas of Melbourne have been growing in recent years, as people and animals come into closer proximity due to a rapid population growth and higher density housing. The physical and psychological impacts of dog attacks can be severe and Melton City Council takes its role in the enforcement of dog attack regulations very seriously.

This policy has been created to provide some context around the processes undertaken by Council when dealing with dog attacks and related offences such as dogs wandering at large. When read in conjunction with Council's *Dog Attack Work Instruction* it will also ensure openness, transparency and consistency regarding the way Council investigate and deal with dog attacks. The owner (or the person in apparent control of the dog at the time of the attack) will be held responsible for a dog attack. Penalties for dog attacks can include significant fines, criminal convictions, payment of council and victim costs, imprisonment and in some cases the dog being ordered to be destroyed.

## 2 Scope

This policy applies to the following groups:

- Council employees involved in the administration, investigation and prosecution of dog attacks
- Council employees involved in Melton Animal Pound duties
- All dog owners or persons responsible for a dog within the City of Melton. This includes visitors to the municipality as well as local residents
- Members of the public who have been rushed, chased, or have felt threatened by the actions of a dog or dog owner
- Members of the public who own animals that have been attacked or bitten by a dog

### 3 Definitions

Word/Term	Definition
Dog Attack	A dog attack is defined as an action of a dog that involves the dog rushing at, chasing or biting a person or another animal (other than vermin), whether or not any injury or damage occurs to the person or animal.
Dog Owner	The owner of the dog or the person in apparent control of the dog at the time of the attack
Dog Rush	When a dog approaches a person to a distance of less than 3 metres in a menacing manner, displaying aggressive tendencies that may include snarling, growling and raised hackles.
Melton City Council General Local Law 2015	Melton City Council Local Law currently in place within Melton City and authorised under Section 111(1) of the <i>Local Government Act 1989</i>
Restricted Breed	Means a dog that is any one of the following breeds; Japanese Tosa, Fila Brasileiro, Dogo Argentino, Presa Canario, American Pit Bull Terrier
The Act	<i>Domestic Animals Act 1994</i>

### 4 Policy

Council encourages that all dog attacks be reported and commits to investigating all reported attacks to a conclusion. Dog attack investigations are initiated with the mindset that they may all result in a court case. This policy provides some important definitions relating to dog attacks and outlines some of the consequences facing owners of dogs responsible for attacks within the City of Melton. The legislation which underpins this policy is the *Domestic Animals Act 1994*. *The Act* should be referred to whenever additional details or information regarding penalties is required.

#### 4.1 Domestic Animals Act 1994

*The Act* gives Melton City Council and other Local Governments various discretions in respect of dogs that are found to have attacked persons and animals, or otherwise require specific controls. This includes (but is not limited to) the power to investigate and prosecute following dog attacks, and various discretions in respect of dogs that have been involved in attacks, or otherwise present a risk to public safety as follows:

- a. The discretion to *refuse to register* (or to refuse to renew registration) of dangerous dogs, or to impose conditions on the registration of dangerous dogs, in accordance with Section 17 of the Act.
- b. The discretion to declare a dog to be a *Menacing Dog* in prescribed circumstances in accordance with Section 41A of the Act.
- c. The discretion to declare a dog to be a *Dangerous Dog* in prescribed circumstances in accordance with Section 34 of the Act.
- d. The discretion to *search* for a dog in prescribed circumstances in accordance with Section 84E of the Act.
- e. The discretion to *seize* a dog in prescribed circumstances in accordance with Part 7A of the Act.
- f. The discretion to *destroy* a dog that has been involved in an attack or rush, or other non-compliance with the Act in accordance with Section 84P of the Act.

## 4.2 Wandering dogs

Dog attacks are often caused by dogs wandering in the street, rushing out from poorly fenced properties, or exercised off-leash by their owner. It is an offence under Section 24 of *the Act* to let a dog wander on its own outside a property and when this occurs Council may issue orders pursuant to Section 26(2) requiring that dogs must be under effective control in any public place.

Allowing a dog to wander can place it at risk of being lost, attacked or involved in an accident. It can also create problems for neighbours. They are entitled to enjoy their property without a dog entering it and possibly causing damage, creating a nuisance or chasing their animals.

Furthermore, the owner of any animals or birds kept for farming purposes is legally entitled to destroy any dog found at large near their livestock.

There are designated areas within the City of Melton where dogs may be exercised off-lead. These areas are identified by signs and have conditions of use which must be observed and obeyed by dog owners. Any dog attack which occurs in these off-leash areas will be subject to the same investigation and prosecution process as dog attacks which occur elsewhere. For further details and locations of Council's off-leash areas, please refer to the City of Melton website.

## 4.3 Serious injury resulting from dog attack

Section 3(1) of *the Act* specifies a serious injury as '*an injury requiring medical or veterinary attention in the nature of a broken bone, a laceration, the total or partial loss of sensation or function in a part of the body, or an injury requiring cosmetic surgery*'. If serious injury occurs as the result of a dog attack, Council may destroy the dog pursuant to Section 84TA of *the Act*, or declare the dog dangerous and the owner will subsequently be bound by the requirements outlined by the state government. Serious injury sustained as the result of an attack will also increase the likelihood of a prosecution and the severity of the consequences for the owner.

## 4.4 Consequences of a dog attack

When a dog attack occurs, the City of Melton will take all steps necessary to enforce the discretions available to Council appropriate to the incident. For an investigation to commence, Council must receive a notification stating the nature of the incident or event. A City of Melton authorised officer will then contact the complainant to obtain further information and establish if an offence under *the Act* seems to have occurred, the severity of the offence and the appropriate course of action. The officer will explain the investigation process and other information relevant to the alleged offence. Enforcement options are limited if the complainant is not willing to provide an undertaking to give evidence in court.

If proven, the consequences of a dog attack will usually include a combination of the following penalties:

- a. The dog owner may be issued with an infringement notice and ordered to pay a fine.
- b. The dog involved in the attack may be declared menacing or dangerous by Council.
- c. The dog involved in the attack may be seized and held by Council pending the outcome of any legal action against the owner. Daily costs and release fees will be applicable as outlined in Section 4.7 of this document.
- d. If a dog attack is proven in a court this may result in a criminal conviction for the dog owner or person in charge of the dog at time of the offence or both.
- e. Council may pursue all costs associated with the case, and the victim of a proven attack can also claim costs. In some cases the victim may pursue civil action against the accused for additional damages.
- f. The owner of the dog may be subject to a banning order preventing dog ownership for up to ten years.

- g. A dog involved in an attack may be ordered by Council or a court to be destroyed.
- h. Serious dog attacks may result in imprisonment of the dog owner if the dog has previously been declared dangerous or is a restricted breed dog.
- i. There are also offences under the Crimes Act 1958, Division 9AA, Subdivision 1 with regard to dogs that have been declared dangerous, menacing or restricted and where the owner has failed to control a dog which has killed a person or had reckless control of a dog putting another person in danger of death.

#### **4.5 Menacing dogs**

Some offences are treated more seriously if a council has previously declared a dog as dangerous or menacing, or if the dog is a restricted breed. Under Section 41A of *the Act*, Council may declare a dog to be a menacing dog if:

- a. the dog has rushed at or chased a person; or
- b. the dog bites any person or animal causing injury to that person or animal that is not in the nature of a serious injury; or
- c. the dog has been declared a menacing dog under a law of another State or Territory.

Owners of dogs that have been declared menacing have a number of obligations. These include notifying the council within 24 hours in certain circumstances, such as if the dog has rushed at or chased someone, or if it goes missing.

#### **4.6 Dangerous dogs**

Under Section 34 of *the Act*, Council may declare a dog dangerous if it:

- a. has caused death or serious injury to a person or animal; or
- b. is a menacing dog and the owner has been fined twice before for failing to muzzle the dog and keep it on a leash; or
- c. has been declared a dangerous dog by another State or Territory; or
- d. has been served with two infringement notices for rushing, chasing or non-serious bites.

Any person who acquires a dog which has previously been declared dangerous by any State or Territory is required to notify Council immediately. This requirement also applies to owners of dangerous dogs which have been relocated between States or Territories.

#### **4.7 Impoundment of a dog**

If Council take the decision to, or are legally instructed to seize a dog as per section 4.1 (e) above, the dog will be impounded and daily impound and release fees will be applicable. In addition, Section 10C of the *Domestic Animals Act 1994* requires cats and dogs to be micro chipped as a condition of registration (which is compulsory once the animal is 3 months of age). On impoundment, if a dog is found to be unregistered the owner will be instructed to register the animal. In cases where dogs are not micro chipped, micro chipping will be carried out at the owner's expense. In cases where dogs are to be declared dangerous any associated fees such as de-sexing will be carried out at the owner's expense. All fees are subject to annual revision and the latest fees are available for viewing on the City of Melton website.

Impounded dogs may only be visited during normal animal pound opening hours. Visitation rights for dogs impounded due to an attack are evaluated on a case-by-case basis and awarded at Council's discretion.

Any dog seized will remain in custody until the alleged incident has been fully investigated.. Where an order for destruction has been made by the court or pursuant to Section 84TA as per section 4.3 above, the dog will be euthanised, and where a dog is to be declared dangerous or menacing,

the owner of the dog must comply with relevant state government regulations before the dog is released.

#### 4.8 Domestic Animals Act: Related offences

Whenever a dog attack occurs, City of Melton authorised officers will conduct a variety of background checks in relation to the animals and owners involved. As a result of these checks, a dog owner can often be charged with a variety of other domestic animal offences in addition to charges relating to the actual attack. The following table references the *Domestic Animals Act* 1994 to provide details of some of the more common additional offences which may arise if a dog is involved in an attack:

Code	Domestic Animals Act Offence Description
10	Failure to apply to register a dog or cat
10(2)	Failure to renew the registration of a dog or cat
20(1)	Registered dog or cat not wearing Council identification marker outside premises
21	Unregistered dog or cat wearing Council identification marker
22	Person other than owner removing, altering or defacing identification marker
23(4)	Dog or cat on private property after notice served
24(1)	Dog at large or not securely confined to owners premises during day time
24(2)	Dog at large or not securely confined to owners premises during night time
26(1)	Contravening Council order relating to presence of dogs and cats in public places
29(7)	Allow dog to rush or chase a person
37(2)(b)	Failure to notify Council of missing dangerous dog
38(1)	Dangerous dog not confined to residential premises
38(2)	Dangerous dog not confined to non-residential premises
41E	Not muzzling or controlling menacing dog
41EA	Keeping a restricted breed dog
41G	Fail to confine restricted breed dog

#### 4.9 Costs to victims of dog attacks

If a prosecution is successful, Council can ask the court for costs from the owner or the person in apparent control of the dog at the time of the attack. Typically these costs will be comprised of Council expenses and costs that may have been incurred by the victim of the dog attack such as veterinary or medical expenses. Complainants may also take civil action for damages, regardless of Council initiating a prosecution. However, it is *not the role of Council* to recover costs for damages alleged to have occurred in a dog attack and it is not a consideration to be taken into account when authorised officers decide on the appropriate enforcement option. Under no circumstances will City of Melton authorised officers' act as intermediaries in recovering costs, and prosecutions will not be initiated for the purposes of recovering costs. The decision to prosecute rests with Council, based primarily on the evidence and seriousness of the case.

#### 4.10 Offences relating to authorised officers

Council is committed to ensuring the health, safety and wellbeing of its employees. Authorised officers responsible for enforcing animal management legislation have a right to do so without being subjected to harassment, obstructive behaviour or abuse.

As outlined in Section 4.1 of this policy, the *Domestic Animals Act* 1994 gives authorised officers of Council the power to investigate and prosecute following dog attacks. Part 7 of the Act provides detailed information regarding the role of authorised officers and the enforcement options available to the officers whilst carrying out their lawful duty. In particular, this policy highlights the following sections of *the Act*.

### Section 76: Offence to refuse to give information or documents

*A person must not refuse to or fail, without reasonable excuse, to comply with a lawful direction, order or a requirement of an authorised officer; or*

- refuse or fail without reasonable excuse, to give that person's name and place of residence; or*
- a person must not, without reasonable excuse, obstruct or hinder or attempt to obstruct or hinder an authorised officer in the discharge of his or her powers, duties or functions under this Act; or*
- a person must not, without reasonable excuse, refuse admission to an authorised officer exercising a power of entry under this Act or a person assisting an authorised officer in exercising a power of entry under this Act.*

### Section 74(2): Powers of authorised officers

*An authorised officer who is exercising a power under subsection (1), (1A) or (1B) may at any reasonable time and by any reasonable means enter any building not occupied as a place of residence or any land or vehicle; or*

- search the whole or any part of any building, land or vehicle; or*
- inspect animals, enclosures or other goods; or*
- ask questions; or*
- seize, examine or take copies of, or extracts from documents; or*
- seize and remove any animal in accordance with Division 2 of Part 7A (of the Act).*

## **5 Responsibility /Accountability**

<b>Responsible Individual / Group</b>	<b>Responsibility</b>
Manager Compliance	Overall responsibility for ownership and implementation of the policy
City Amenity & Compliance Coordinator	Responsible for actioning and enforcing the policy
City Amenity & Compliance Authorised Officers	Responsible for actioning and enforcing the policy
Melton City Council Policy Review Panel	Responsible for review and approval of policy

## **6 References and links to legislation and other documents**

<b>Name</b>	<b>Location</b>
<i>Domestic Animals Act 1994</i>	<a href="http://www.legislation.vic.gov.au">http://www.legislation.vic.gov.au</a>
<i>Domestic Animal Regulations 2005</i>	<a href="http://www.legislation.vic.gov.au">http://www.legislation.vic.gov.au</a>
<i>Local Government Act 1989</i>	<a href="http://www.legislation.vic.gov.au">http://www.legislation.vic.gov.au</a>
Melton City Council General Local Law 2015	<a href="http://www.melton.vic.gov.au/Regulations/Local-Laws/General-local-law">http://www.melton.vic.gov.au/Regulations/Local-Laws/General-local-law</a>